The TPB Code of Professional Conduct

MODULE 1 | 1.4 | STUDENT COMPANION

Registration tests a practitioner at the door; the **Code of Professional Conduct** governs how they behave afterwards. The Code is law (**Tax Agent Services Act 2009, s 30-10**), it is enforced by the Tax Practitioners Board (TPB), and it binds registered **tax agents and BAS agents**. Its **14 principles** sit under **five categories**. For a breach the Board can caution, make an order, suspend or terminate registration; financial penalties are a matter for the Federal Court.

Fourteen principles in five categories

Honesty and integrity 3

1. Act honestly and with integrity
2. Comply with the tax laws in your own affairs
3. Account for client money or property held on trust

Independence 2

4. Act lawfully in the client's best interests
5. Have adequate arrangements to manage conflicts of interest

Confidentiality 1

6. Keep client affairs confidential: no disclosure to third parties without permission, unless a legal duty applies

Competence 4

7. Competent service, including work done on your behalf
8. Maintain relevant knowledge and skills
9. Reasonable care in ascertaining the client's state of affairs
10. Reasonable care to apply the tax laws correctly

Other responsibilities 4

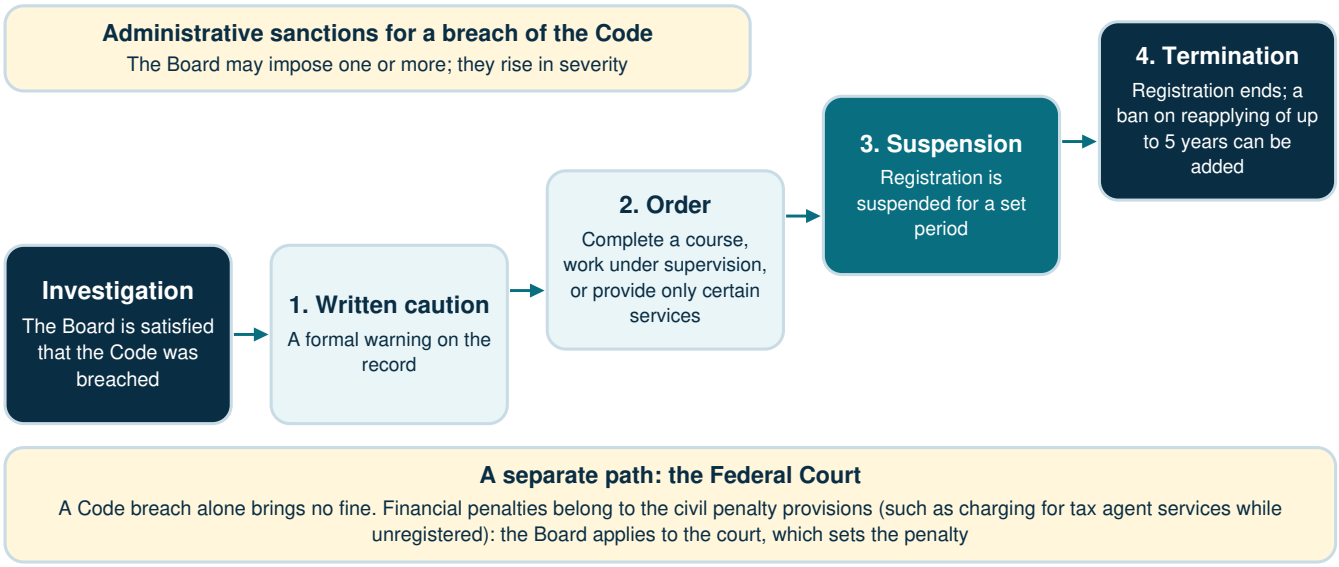
11. Do not knowingly obstruct the administration of the tax laws
12. Advise clients of their rights and obligations
13. Maintain the required professional indemnity insurance
14. Respond to the Board in a timely, responsible, reasonable way

Count them: 3 + 2 + 1 + 4 + 4 = 14. Further obligations have been added to the Code in recent years; these 14 principles remain its core.

What each category asks of you in practice

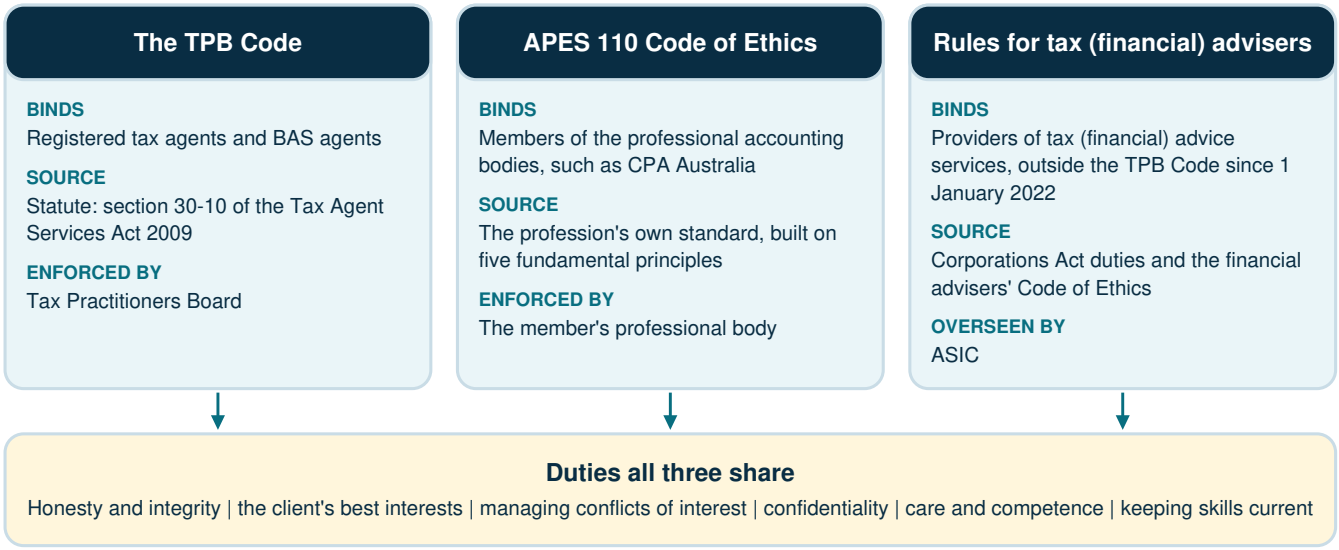
Category	In practice
Honesty and integrity (1-3)	Be truthful with clients, the ATO and the Board. Keep your own lodgments and payments up to date. Keep client money separate and account for all of it.
Independence (4-5)	"Lawfully" comes first: best interests never stretch to a claim the law does not allow. Identify conflicts, then disclose, obtain informed consent or step aside.
Confidentiality (6)	Get the client's permission before passing on their information. A legal duty to disclose, such as a formal notice from the ATO, is the exception.
Competence (7-10)	You answer for work done on your behalf. Keep your knowledge current. Ask questions when a client's information does not add up. Reasonable care, not perfection.
Other responsibilities (11-14)	Do not hinder the administration of the tax laws. Tell clients their rights and obligations. Keep the required insurance. Answer the Board promptly.

What the Board can do about a breach



How it works: the Board must first investigate. If it is then satisfied that the Code has been breached, it may impose **one or more** of the four administrative sanctions. An **order** can require a course of education, supervision by another registered agent, or a limit on the services provided. On **termination** the Board can also set a period, five years at most, in which the person may not reapply.

The Code and its neighbours



How the Code lines up with APES 110

The two are not identical, but they align broadly. A member of a professional body who is also registered with the TPB answers under both for the same conduct.

TPB Code category	Closest APES 110 fundamental principle
Honesty and integrity	Integrity
Independence	Objectivity
Confidentiality	Confidentiality
Competence	Professional competence and due care
Other responsibilities	Professional behaviour (complying with laws and regulations)

Tax (financial) advice providers: registered with ASIC, not the TPB, since 1 January 2022, so the Code no longer applies to them. As Australian financial services licensees or their representatives they must, under the Corporations Act 2001, act in the client's best interests, give priority to the client where there is a conflict, and give appropriate advice. Since 1 January 2020 every financial adviser has also had to comply with a code of ethics first issued by the Financial Adviser Standards and Ethics Authority (FASEA). FASEA was wound up at the start of 2022 and the Minister now sets the code, but the FASEA code continues until a new one is made.

Practice questions

MODULE 1 | 1.4 | TRY THESE BEFORE THE WORKED ANSWERS

Question 1 - Name the category and the principle

Situation	Category	Principle
(a) An agent's junior prepares forty returns, which are lodged under the agent's registration without anyone reviewing them.		
(b) An agent receives a client's refund into the practice trust account and uses it to pay the office rent, intending to put it back later.		
(c) At a barbecue, an agent tells a client's landlord how much profit the client's shop made last year.		
(d) An agent holds back documents that the ATO has formally required, to slow down an audit of a client.		
(e) An agent prepares the returns of two business partners who are in dispute over how their profit should be split, and tells neither of them about the difficulty.		
(f) An agent has not lodged their own activity statements for the past year.		

Question 2 - Facing the Board

Tevita Faleafa is a registered BAS agent. A client complains to the TPB that he applied out-of-date PAYG withholding rates to the client's payroll for a full year. The Board investigates and also finds that he has done no continuing education for three years, that his professional indemnity insurance lapsed last year, and that he ignored two written requests from the Board for information.

(a) Which sanctions could the Board impose?

(b) Which outcome could the Board not order itself?

Question 3 - The Code and its neighbours

Explain (a) how the Code overlaps with APES 110, and (b) why a financial planner who gives tax advice is not bound by the Code yet owes similar duties.

Worked answers

MODULE 1 | 1.4 | WORKED ANSWERS - ATTEMPT THE QUESTIONS FIRST

Question 1 - Name the category and the principle

Situation	Category	Principle and reasoning
(a) Unreviewed returns	Competence	Principle 7. A service provided on the agent's behalf must be provided competently, so the agent answers for unsupervised work.
(b) Client refund used for rent	Honesty and integrity	Principle 3: account to the client for money held on trust. It is also dishonest (principle 1), whatever the intention to repay.
(c) Talking to the landlord	Confidentiality	Principle 6. Client information went to a third party without permission, and no legal duty required it.
(d) Holding back documents	Other responsibilities	Principle 11: no knowing obstruction of the proper administration of the tax laws.
(e) Two partners in dispute	Independence	Principle 5: there must be adequate arrangements to manage the conflict. Acting on in silence also puts principle 4 at risk, because the agent cannot serve both clients' best interests.
(f) Own activity statements	Honesty and integrity	Principle 2: comply with the tax laws in your own affairs. No client is affected, yet the Code is breached.

Question 2 - Facing the Board

What has gone wrong: the out-of-date rates point to principles 8 (maintain knowledge and skills), 10 (reasonable care to apply the law correctly) and 7 (competent service). The lapsed insurance breaches principle 13, and ignoring the Board's requests breaches principle 14.

(a) Sanctions available. Having investigated and being satisfied that the Code was breached, the Board may impose one or more of:

- a **written caution**;
- an **order**, for example to complete a course on PAYG withholding, to work under the supervision of another registered agent, or to provide only certain services;
- **suspension** of his registration for a set period;
- **termination** of his registration, with a period (five years at most) in which he may not reapply.

Several breaches, including silence towards the regulator and no insurance, make a caution alone unlikely. An order to retrain deals with the knowledge gap; suspension or termination becomes more likely the less willing he is to put matters right.

(b) What the Board cannot do. It cannot fine him. A breach of the Code brings administrative sanctions only. Financial penalties attach to the civil penalty provisions of the Tax Agent Services Act 2009, and even then the Board must apply to the Federal Court, which decides the penalty.

Question 3 - The Code and its neighbours

(a) Overlap with APES 110. The Code's five categories broadly match the five fundamental principles of APES 110: honesty and integrity sits with integrity, independence with objectivity, competence with professional competence and due care, confidentiality appears in both, and the other responsibilities are closest to professional behaviour. They are not identical, and they differ in kind: the Code is statute, enforced by the TPB through sanctions on registration, while APES 110 is the profession's standard, enforced by the professional bodies against their members. A CPA who is a registered tax agent is bound by both, so one act (say, disclosing a client's affairs) can breach both.

(b) The financial planner. The Code binds only those the TPB registers: tax agents and BAS agents. Since 1 January 2022 providers of tax (financial) advice services have been registered with ASIC, so the Code no longer applies to them. They still owe similar duties from two other sources. Under the Corporations Act 2001, a licensee's representative must act in the client's best interests, give priority to the client in a conflict, and give appropriate advice. And the financial advisers' code of ethics (compulsory since 1 January 2020, first set by FASEA and continuing until the Minister makes a new one) covers the same ground: honesty and integrity, conflicts, confidentiality, care and competence, and keeping skills current.